

HURWITZ & FINE, P.C.

ATTORNEYS AT LAW

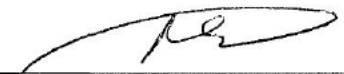
Scott D. Storm
sds@hurwitzfine.com

May 27, 2021

Plaintiffs are directed to respond to Defendant's letter on or before June 8, 2021 consistent with this Court's Individual Practices advising the Court whether Plaintiffs oppose Defendant's application. Plaintiffs' counsel is also directed to file a Notice of Appearance in this case promptly. Defendant is directed to serve a copy of this endorsement on Plaintiff's counsel as soon as possible and to file proof of service with the Court. The Court will rule on Defendant's application after June 8, 2021.

Dated: June 1, 2021
White Plains, NY

SO ORDERED:


NELSON S. ROMAN
United States District Judge

Nelson S. Roman, US District Judge
United States Courthouse
300 Quarropas Street
White Plains, New York 10601

**RE: Joseph Hauser III, Joseph T. Hauser, Jr. vs. State Farm Mutual
Automobile Insurance Company
Docket Number: 7:21-cv-04673-NSR
Our File Number: 20210654**

Dear Judge Roman:

I represent State Farm Mutual Automobile Insurance Company in this case.

This is a letter request for a pre-motion conference pursuant to Your Honor's Individual Practices in Civil Cases.

State Farm would like to file an immediate Fed. R. Civ. P. 12(e) Motion for a More Definite Statement. The plaintiff had filed a summons with notice in the New York State Supreme Court. State Farm served a notice of appearance and demand for complaint and then removed this case to the U.S.D.C., S.D.N.Y. based upon diversity jurisdiction.

As you know, federal procedure does not include a summons with notice or a notice of appearance and demand for complaint. Although my experience is that what occurs in state court before removal should remain valid and in full force after removal until duly altered -- meaning the Plaintiffs must now timely serve a complaint -- the most cautious approach seems to include also filing the subject motion.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 6/1/2021

MEMO ENDORSED

HURWITZ & FINE, P.C.

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United States Courthouse
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The summons with notice is insufficient for an adequate answer with affirmative defenses. It is so unintelligible that that a responsive pleading cannot be framed. Furthermore, the claim involves allegations of special damages which, pursuant to Fed. R. Civ. P. 9(g), must be specifically stated.

The proposed motion is attached as **Exhibit A**. Pursuant to Your Honor's Individual Practices courtesy copies of the summons with notice and notice of appearance and demand for complaint are attached as **Exhibit B**.

To any extent that an answer is arguably required in this case now that it has been removed to federal court, it would be due 7 days from the date of removal pursuant to Fed. R. Civ. P. 81 (c)(2)(C). The case was removed May 25, 2021. However, it is my understanding from the Individual Practices and a conversation our paralegal had with your chambers that this letter request will stay that deadline, to any extent it is arguably applicable, until the conference at which time Your Honor will set a new deadline. If my understanding is incorrect, then I would appreciate immediate permission to file the motion or to have the conference scheduled on or before June 1, 2021.

Thank you for your attention to this request. We look forward to hearing from you.

Very truly yours,

HURWITZ & FINE, P.C.

A handwritten signature in black ink, appearing to be 'S. Storm', with a long horizontal stroke extending to the right.

Scott D. Storm

SDS/dam

Attachments

cc: Wayne A. Gavioli, Esq.
via email: Wgav2@aol.com